

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

10

INFORMATION

**TOPIC Proposed Rule - Chapter 93 - Nonpoint Source Pollution Control Set-
 Aside Programs**

The attached notice of intended action for changes to Chapter 93 “Nonpoint Source Pollution Control Set-Aside Programs” is being presented to the Environmental Protection Commission for information. The changes primarily affect the Livestock Water Quality (LWQ) Facilities program, which, as part of the Clean Water State Revolving Fund, provides low-interest financing to eligible animal feeding operations for manure management structures, equipment, and plans.

A new facility design, which appears to be environmentally beneficial, is the bedded confinement building, or deep-bedded building. The current rules for the LWQ program do not allow for financing these structures. The Department is proposing to allow financing of these types of roofed facilities under certain conditions as outlined in the draft rules.

Other proposed changes include the following items:

- A restating of the purpose of the program to include pollution prevention;
- Updating the date for the federal definition of a Concentrated Animal Feeding Operation in both the LWQ and the Local Water Protection Program;
- Clarification of the descriptions of eligible practices;
- Referencing the definition and requirements of manure management plans in 567 Chapter 65;
- Updating the requirements for project approval and removing the option of departmental review of plans and specifications;
- Allowing financing of updates to manure management, nutrient management, or comprehensive nutrient management plans as part of project financing;
- Adding a requirement for recipient record-keeping; and
- Adding language allowing the establishment of loan fees in the Intended Use Plan.

A stakeholder meeting is scheduled for March 19, 2007 in order to solicit input from agricultural and environmental organizations. The notice of intended action will be presented to the Commission for decision at the May 1, 2007 meeting.

Patricia Cale-Finnegan
Water Quality Bureau
February 28, 2007

D R A F T

ENVIRONMENTAL PROTECTION COMMISSION [567] Notice of Intended Action

Pursuant to the authority of Iowa Code Section 455B.173 and 455B.105(11), the Environmental Protection Commission proposes to amend Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs.”

The changes primarily affect the Livestock Water Quality (LWQ) Facilities program, which, as part of the Clean Water State Revolving Fund, provides low-interest financing to eligible animal feeding operations for manure management structures, equipment, and plans.

A new facility design, which appears to be environmentally beneficial, is the bedded confinement building, or deep-bedded building. The current rules for the LWQ program do not allow for financing these structures. The Department is proposing to allow financing of these types of roofed facilities under certain conditions as outlined in the draft rules.

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- Allowing financing of updates to manure management, nutrient management, or comprehensive nutrient management plans as part of project financing;
- Adding a requirement for recipient record-keeping; and
- Adding language allowing the establishment of loan fees in the Intended Use Plan.

Any interested person may make written suggestions or comments pertaining to the proposed rule revisions on or before June 21, 2007. Such written materials should be directed to Patti Cale-Finnegan, Water Quality Bureau, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, IA 50309-4611; fax 515/725-0348 or patti.cale-finnegan@dnr.state.ia.us. Persons wishing to convey their views orally should contact her at 515/725-0498.

When submitting comments, the Water Quality Bureau encourages you to utilize the following guidelines. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.

3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on June 14, 2007 at 10:00 a.m. in the conference room at the IDNR Water Supply office at 401 SW 7th Street, Suite M, Des Moines, IA, 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule. Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code section 17A.3(1)“b,” chapter 455B sections 455B.105, 455B.291 and 455B.297.

The following amendments are proposed.

ITEM 1. Amend rule 567—93.3(2) as follows:

Livestock water quality facilities set-aside. The purpose of the set-aside is to assist owners of existing animal feeding operations to meet state and federal requirements and/or to prevent, minimize or eliminate water pollution. Projects may be selected using the rating and ranking process in 567—Chapter 91.

ITEM 2. Amend rule 567—93.5(1) as follows:

Livestock water quality facilities assistance. Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions or in other manners as specified in an agreement with a pass-through loan recipient. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department and/or to prevent, minimize or eliminate water pollution.

c. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

Note: Current federal laws and rules as of ~~August 2005~~ February 2007 do not allow assistance for concentrated animal feeding operations or assistance for animal feeding operations that will become concentrated animal feeding operations as a result of the project.

Loans will be made only to livestock producers that are operators of record and have legal control of the property containing the animal feeding operation for the duration of the loan.

d. Project eligibility. The water pollution control facilities considered eligible for assistance include:

- lagoons;
- waste treatment facilities and equipment, including but not limited to land used as part of the waste treatment system;
- waste storage or holding structures;
- ~~composters~~ composting facilities and equipment;
- pipes, pumps, and agitation equipment used to move and manage manure;

- fencing around lagoons and other waste storage structures;
- water systems used to flush water in waste treatment systems;
- irrigation systems;
- tank wagons, manure spreaders, tractor blades used for scraping waste and other waste collection and processing equipment (including ~~without limitation~~ tank trucks, loaders, skid loaders, and waste irrigation equipment);
- ~~recycle pumps~~,
- portions of feeding floors and loafing areas used for waste collection and storage;
- ~~tractor blades used for scraping waste~~,
- vegetative filters, filter strips water and sediment control basins, contour buffer strips, and diversions used to reduce pollution potential from livestock facilities or land disposal areas;
- fencing and cross fencing along with any associated watering facilities used as part of managed grazing systems;
- and other similar structures, equipment or water pollution abatement activities as may be found in ~~approved~~ manure management plans that fit the requirements of 567—65.17(459), nutrient management plans, or comprehensive nutrient management plans, as defined by the USDA Natural Resource Conservation Service, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog-confinement facility (such as a ~~slated~~ slatted floor) shall be excluded.

Assistance for development of manure management plans, nutrient management plans, and comprehensive nutrient management plans, as defined by the USDA Natural Resource

~~Conservation Service~~, is eligible. Assistance may be available for the above-mentioned practices when a replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake in order to prevent a potential water quality impairment, mitigate a documented impairment, or eliminate a potential or documented pollutant source from a watershed. Assistance may be available for roofed facilities when they provide total containment of animals and manure and:

1. Completely replace an existing open feedlot operation, place all the animals under roof; or
2. Expand an existing animal feeding operation, place all animals in the expansion portion of the operation under roof, and install or document provision of adequate manure controls on the remaining open feedlot.

ITEM 3. Amend rule 93.5(2) as follows:

Applying for assistance. Application for project approval shall be made on forms provided by the department or its agent.

ITEM 4. Amend rule 93.5(3) as follows:

State review and approval. Prior to receiving assistance, a livestock producer shall submit to the department ~~complete plans and specifications of the facilities to be constructed and a complete list of all waste or nutrient management documents to be developed.~~ The department will review the plans and specifications for compliance with design standards. Once the plans and specifications are determined to meet the design requirements and manure and waste control

~~needs of the animal feeding operation, the department will issue a letter of project approval or construction permit (whichever is applicable) to the livestock producer. Other forms a description of facilities, equipment or planning to be financed and documentation of project approval will be accepted as determined by the department and detailed on the project application.~~

ITEM 5. Amend rule 93.5(5) as follows:

Manure management plan required. The livestock producer shall have a manure management plan that fits the requirements of 567—65.17(459), a nutrient management plan, or a comprehensive nutrient management plans, as defined by the USDA Natural Resource Conservation Service approved by the department to be eligible for the loan or, as part of the loan, develop a manure management plan, nutrient management plan or comprehensive nutrient management plan.

ITEM 6. Amend rule 93.5(6) as follows:

Eligible costs. All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development or updating of a manure management plan, nutrient management plan or comprehensive nutrient management plan are eligible costs.

ITEM 7. Amend rule 93.5(7) as follows:

Ineligible costs. Costs for development of new animal feeding operations are not eligible costs. ~~Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d)~~

~~listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake.~~ Costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance ~~or updating a comprehensive nutrient management plan~~ are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost.

ITEM 8. Add the following rule 93.5(8):

Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

ITEM 9. Renumber existing rules 93.5(8) as 93.5(9).

ITEM 10. Renumber existing rule 93.5(9) as 93.5(10) and amend as follows:

Interest rate and fees. The loan interest rate and loan fees shall be established annually in the ~~HUP~~ Clean Water State Revolving Fund Intended Use Plan. The loan interest rate is not to

exceed the prevalent interest rate, ~~and~~ Establishment of loan fees will take into account the administration cost of the livestock water quality facilities set-aside.

ITEM 11. Amend rule 567—93.6(455B) as follows:

c. Applicant eligibility. Assistance is available to any person who owns land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record of the property where the local water protection projects are to be installed. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of ~~August 2005~~ February 2007 do not allow assistance for concentrated animal feeding operations or assistance for animal feeding operations that will become concentrated animal feeding operations as a result of the project.